

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 27

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TSUTOMU KIDO, HIROYUKI SOGA,
TOSHIO INOUE, and KOJI KAWAMURA

Appeal No. 2001-1794
Application No. 08/882,787

ON BRIEF

Before COHEN, STAAB, and BAHR, Administrative Patent Judges.
COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1, 4, and 6 through 9. These claims constitute all of the claims remaining in the application.

Appellants' invention pertains to a disposable body fluids absorbent article and to a method of disposal of a disposable body fluids absorbent article. A basic understanding of the invention can be derived from a reading of exemplary claims 1 and

Appeal No. 2001-1794
Application No. 08/882,787

7, respective copies of which appear in the APPENDIX to the brief
(Paper No. 25).

As evidence of obviousness, the examiner has applied the
documents listed below:

Ames-Ooten et al. (Ames-Ooten)	5,575,784	Nov. 19, 1996 (filed Nov. 2, 1995)
Toyoda et al. (Toyoda)	5,807,371	Sep. 15, 1998 (filed Mar. 5, 1996)
Hayase et al. (Hayase) (Kao) ¹	623,330 A2 European Patent Application	Nov. 9, 1994
Nagai (Japan) ²	S58-2908	Feb. 12, 1983

The following rejection is the sole rejection before us for
review.³

¹ For consistency with the examiner's terminology, we shall
continue to refer to this document as Kao.

² Our understanding of this document is derived from a
reading of a very limited translation thereof. A copy of the
translation is appended to this opinion.

³ As discerned from the answer (page 2), all non-prior art
final rejections have been withdrawn.

Appeal No. 2001-1794
Application No. 08/882,787

Claims 1, 4, and 6 through 9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the Japanese reference (Nagai) in view of Ames-Ooten, Toyoda, and Kao (Hayase).

The full text of the examiner's rejection and response to the argument presented by appellants appears in the answer (Paper No. 26), while the complete statement of appellants' argument can be found in the brief (Paper No. 25).

OPINION

In reaching our conclusion on the obviousness issue raised in this appeal, this panel of the board has carefully considered appellants' specification and claims, the applied teachings⁴, and

⁴ In our evaluation of the applied prior art, we have considered all of the disclosure of each document for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have been expected to draw from the disclosure. See In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

Appeal No. 2001-1794
Application No. 08/882,787

the respective viewpoints of appellants and the examiner. As a consequence of our review, we make the determination which follows.

We cannot sustain the rejection of appellants' claims based upon the examiner's rationale in applying the prior art.

Independent claim 1 sets forth a disposable body fluids absorbent article comprising, inter alia, a tape fastener having a free end portion and an adhesive portion extending longitudinally between the free end portion and an elastically stretchable portion with an inner surface of the adhesive portion facing an outer surface of a back sheet and releasably directly bonded to the outer surface. Independent claim 7 addresses a method of disposal of a disposable body fluids absorbent article in which a tab fastener has a fixed end portion, a free end portion releasably adhesively attached to a backsheet prior to use, and an elastically stretchable portion extending longitudinally between the fixed and free end portions.

The basic teaching relied upon by the examiner is a Japanese document referenced in appellants' specification, which document

discloses a disposable diaper with an adhesive tape piece, e.g., tape 12 in Fig. 5, attached to a back surface of the diaper. The examiner acknowledges that the tape in this reference lacks an elastically stretchable portion, but relies upon the Ames-Ooten (Fig. 5), Toyoda (Figs. 1 through 4), and Kao teachings to provide what is lacking in the Japanese document (answer, page 4).

First, we appreciate that not only does the Japanese reference lack a tape with an elastically stretchable portion, but it also fails to disclose a free end portion of a tape releasably adhesively attached to a backsheet of an absorbent article. Second, while the particular embodiments in each of the Ames-Ooten (Fig. 5), Toyoda (Figs. 1 through 4), and Kao references reveal the knowledge in the art of elastic stretchable portions for tapes, the respective prior art showings relied upon by the examiner each address tapes that lack a free end portion releasably adhesively attached to a backsheet of an absorbent article, as now claimed. Thus, the particular teachings upon which the examiner's rejection is based do not support a

Appeal No. 2001-1794
Application No. 08/882,787

conclusion of obviousness relative to the claimed subject matter. It is for this reason that the rejection on appeal cannot be sustained.

REMAND TO THE EXAMINER

We remand this application for consideration of the following matter.

The examiner should assess the patentability of the claimed subject matter under 35 U.S.C. § 103(a) based at least upon the combined teachings of the Japanese reference (Figs. 4, 5) and Toyoda (Figs. 8 through 15) to determine whether it would have been obvious to configure the single free end adhesive tape of the Japanese reference as a stretchable adhesive tape on the back surface sheet following the teaching of Toyoda. In particular, it is noted that Toyoda reveals the knowledge in the art, at the time of appellants' invention, of alternative stretchable tape configurations having a fixed portion and a releasably adhesive free end portion, with the alternatives of securement to a backsheet (Figs. 8 through 10) or to a release tape affixed to a diaper (Figs. 13 and 14). Further, it should be recognized that

Appeal No. 2001-1794
Application No. 08/882,787

the Japanese reference and Toyoda reflect the known alternatives of single free end and double free end adhesive tapes.

In summary, this panel of the board has not sustained the obviousness rejection on appeal. Additionally, we have included a remand to the examiner.

The decision of the examiner is reversed.

REVERSED AND REMANDED

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
)	
)	
)	
)	BOARD OF PATENT
LAWRENCE J. STAAB)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
)	
JENNIFER D. BAHR)	
Administrative Patent Judge)	

ICC/td1

Appeal No. 2001-1794
Application No. 08/882,787

LOWE HAUPTMAN GILMAN AND BERNER, LLP
1700 DIAGONAL ROAD
SUITE 300/310
ALEXANDRIA, VA 22314

APPEAL NO. 2001-1794 - JUDGE COHEN
APPLICATION NO. 08/882,787

APJ COHEN

APJ STAAB

APJ BAHR

DECISION: REVERSED AND REMANDED

Prepared By: Tina D. Lee

DRAFT TYPED: 12 Aug 03

FINAL TYPED: